

REFERENCE TITLE: **sheriffs and constables; fees; fund**

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

HB 2221

Introduced by
Representatives Nelson, Pearce

AN ACT

AMENDING SECTIONS 11-445 AND 22-136, ARIZONA REVISED STATUTES; RELATING TO FEES IN CIVIL ACTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 11-445, Arizona Revised Statutes, is amended to
3 read:

4 11-445. Fees chargeable in civil actions by sheriffs,
5 constables and private process servers; authority of
6 private process servers; background investigation;
7 constables' logs

8 A. The sheriff shall receive the following fees in civil actions:

9 1. **FOR** serving each true copy of the original summons in a civil suit,
10 sixteen dollars, except that the sheriff shall not charge a fee for service
11 of any document pursuant to section 13-3602 or any injunction against
12 harassment pursuant to section 12-1809 if the court indicates the injunction
13 arises out of a dating relationship.

14 2. **FOR** summoning each witness, sixteen dollars.

15 3. **FOR** levying and returning each writ of attachment or claim and
16 delivery, forty-eight dollars.

17 4. **FOR** taking and approving each bond and returning it to the proper
18 court when necessary, twelve dollars.

19 5. **FOR** endorsing the forfeiture of any bond required to be endorsed by
20 him, twelve dollars.

21 6. **FOR** levying each execution, twenty-four dollars.

22 7. **FOR** returning each execution, sixteen dollars.

23 8. **FOR** executing and returning each writ of possession or restitution,
24 forty-eight dollars plus a rate of forty dollars per hour per deputy **OR**
25 **CONSTABLE** for the actual time spent in excess of three hours.

26 9. **FOR** posting the advertisement for sale under execution, or any
27 order of sale, twelve dollars.

28 10. **FOR** posting or serving any notice, process, writ, order, pleading
29 or paper required or permitted by law, not otherwise provided for, sixteen
30 dollars.

31 11. **FOR** executing a deed to each purchaser of real property under
32 execution or order of sale, twenty-four dollars.

33 12. **FOR** executing a bill of sale to each purchaser of real and personal
34 property under an execution or order of sale, when demanded by the purchaser,
35 sixteen dollars.

36 13. For services in designating a homestead or other exempt property,
37 twelve dollars.

38 14. For receiving and paying money on redemption and issuing a
39 certificate of redemption, twenty-four dollars.

40 15. **FOR** serving and returning each writ of garnishment and related
41 papers, forty dollars.

42 16. For the preparation, including notarization, of each affidavit of
43 service or other document pertaining to service, eight dollars.

44 17. **FOR EVERY WRIT SERVED ON BEHALF OF A JUSTICE OF THE PEACE, A FEE**
45 **ESTABLISHED BY THE BOARD OF SUPERVISORS. MONIES COLLECTED FROM THE WRIT FEES**

1 SHALL BE DEPOSITED IN THE CONSTABLE ETHICS COMMITTEE FUND ESTABLISHED BY
2 SECTION 22-136.

3 B. The sheriff shall also collect the appropriate recording fees if
4 applicable and other appropriate disbursements.

5 C. The sheriff may charge:

6 1. Fifty-six dollars plus disbursements for any skip tracing services
7 performed.

8 2. A reasonable fee for storing personal property levied on pursuant
9 to title 12, chapter 9.

10 D. For traveling to serve or on each attempt to serve civil process,
11 writs, orders, pleadings or papers, the sheriff shall receive two dollars
12 forty cents for each mile actually and necessarily traveled but, in any
13 event, not to exceed two hundred miles, nor to be less than sixteen dollars.
14 Mileage shall be charged one way only. For service made or attempted at the
15 same time and place, regardless of the number of parties or the number of
16 papers so served or attempted, only one charge for travel fees shall be made
17 for such service or attempted service.

18 E. For collecting money on an execution when it is made by sale, the
19 sheriff and the constable shall receive eight dollars for each one hundred
20 dollars or major portion thereof not to exceed a total of two thousand
21 dollars, but when money is collected by the sheriff without a sale, only
22 one-half of such fee shall be allowed. When satisfaction or partial
23 satisfaction of a judgment is received by the judgment creditor after the
24 sheriff or constable has received an execution on the judgment, the
25 commission is due the sheriff or constable and is established by an affidavit
26 of the judgment creditor filed with the officer. If the affidavit is not
27 lodged with the officer within thirty days of the request, the commission
28 shall be based on the total amount of judgment due as billed by the officer
29 and may be collected as any other debt by that officer.

30 F. The sheriff shall be allowed for all process issued from the
31 supreme court and served by the sheriff the same fees as are allowed the
32 sheriff for similar services upon process issued from the superior court.

33 G. The constable shall receive the same fees as the sheriff for
34 performing the same services in civil actions, except that mileage shall be
35 computed from the office of the justice of the peace originating the civil
36 action to the place of service.

37 H. Private process servers duly appointed or registered pursuant to
38 rules established by the supreme court may serve all process, writs, orders,
39 pleadings or papers required or permitted by law to be served prior to,
40 during or independently of a court action, including all such as are required
41 or permitted to be served by a sheriff or constable, except writs or orders
42 requiring the service officer to sell, deliver or take into the officer's
43 custody persons or property, or as may otherwise be limited by rule
44 established by the supreme court. A private process server is an officer of
45 the court. As a condition of registration, the supreme court shall require

1 each private process server applicant to furnish a full set of fingerprints
2 to enable a criminal background investigation to be conducted to determine
3 the suitability of the applicant. The completed applicant fingerprint card
4 shall be submitted with the fee prescribed in section 41-1750 to the
5 department of public safety. The applicant shall bear the cost of obtaining
6 the applicant's criminal history record information. The cost shall not
7 exceed the actual cost of obtaining the applicant's criminal history record
8 information. Applicant criminal history records checks shall be conducted
9 pursuant to section 41-1750 and Public Law 92-544. The department of public
10 safety is authorized to exchange the submitted applicant fingerprint card
11 information with the federal bureau of investigation for a federal criminal
12 records check. A private process server may charge such fees for services as
13 may be agreed upon between the process server and the party engaging the
14 process server.

15 I. Constables shall maintain a log of work related activities, including a listing of all processes served and the number of processes
16 attempted to be served by case number, the names of the plaintiffs and
17 defendants, the names and addresses of the persons to be served except as
18 otherwise precluded by law, the date of process and the daily mileage.

19 J. The log maintained in subsection I of this section is a public
20 record and shall be made available by the constable at the constable's office
21 during regular office hours. Copies of the log shall be filed monthly with
22 the clerk of the justice court and with the clerk of the board of
23 supervisors.

24 Sec. 2. Section 22-136, Arizona Revised Statutes, is amended to read:
25 22-136. Constable ethics committee; fund

26 A. A constable ethics committee is established consisting of the
27 following voting members:

28 1. Two constables from counties with a population of less than one
29 million persons who are appointed by the Arizona association of counties.

30 2. Two constables from counties with a population of one million or
31 more persons who are appointed by the Arizona association of counties.

32 3. One superior court judge who is appointed by the chief justice of
33 the supreme court.

34 4. One justice of the peace who is appointed by the chief justice of
35 the supreme court.

36 5. One county administrator who is appointed by the county supervisors
37 association.

38 6. One sheriff who is appointed by the governor.

39 7. One member of the public who is appointed by the governor.

40 B. The chairperson of the Arizona commission on judicial conduct or
41 the chairperson's designee who is also a member of the commission is the
42 chairperson of the committee. The chairperson of the committee is a
43 nonvoting advisory member. The committee shall adopt a constable code of
44 conduct that addresses attendance at mandatory training and rules of

1 procedure and shall receive administrative support from the Arizona
2 commission on judicial conduct.

3 C. Terms of the committee members are four years, except that the
4 initial terms of two constables, the superior court judge, the county
5 administrator and the sheriff are two years. If a member ceases to hold the
6 position that qualified the member for the appointment, the member's
7 membership terminates and the appointing authority pursuant to subsection A
8 OF THIS SECTION fills the vacancy for the unexpired term.

9 D. The committee shall hear and investigate written complaints from
10 any person involving a constable's ethical or personal conduct. The
11 committee shall attempt to remedy a constable's inappropriate behavior by:

12 1. Mediating.

13 2. Issuing warnings, reprimands or admonishments.

14 3. Instructing constables to take particular action to correct
15 behavior or to take educational courses.

16 4. Urging a constable to retire from office.

17 E. If the committee is not satisfied with the remedies prescribed by
18 subsection D OF THIS SECTION, the committee shall submit a report to the
19 county attorney's office in the county in which the conduct at issue
20 occurred.

21 F. A CONSTABLE ETHICS COMMITTEE FUND IS ESTABLISHED CONSISTING OF
22 MONIES RECEIVED FROM WRIT FEES COLLECTED PURSUANT TO SECTION 11-445,
23 SUBSECTION A, PARAGRAPH 17. THE CONSTABLE ETHICS COMMITTEE SHALL ADMINISTER
24 THE FUND SUBJECT TO LEGISLATIVE APPROPRIATION. ON NOTICE FROM THE COMMITTEE,
25 THE STATE TREASURER SHALL INVEST AND DIVEST MONIES IN THE FUND AS PROVIDED IN
26 SECTION 35-313, AND MONIES EARNED FROM INVESTMENT SHALL BE CREDITED TO THE
27 FUND. THE FUND IS EXEMPT FROM THE PROVISIONS OF SECTION 35-190 RELATING TO
28 LAPSING OF APPROPRIATIONS. THE COMMITTEE SHALL USE:

29 1. EIGHTY PER CENT OF THE MONIES APPROPRIATED FROM THE FUND FOR
30 CONSTABLE TRAINING, EQUIPMENT AND RELATED GRANTS.

31 2. TWENTY PER CENT OF THE MONIES APPROPRIATED FROM THE FUND FOR
32 OPERATING EXPENSES OF THE COMMITTEE.